

Sixty second summary

GMP equalization: guidance on 'conversion' route

The Department for Work and Pensions has published guidance for those who might wish to use the GMP conversion legislation when equalizing pensions for men and women.¹

Background

For more information about guaranteed minimum pensions (GMPs), the problems that they have bequeathed, and the High Court ruling that recently obliged us to address them, read our earlier *Sixty Second Summaries* in this series.² In summary, GMPs give rise to differences in the pensions for men and women, and it is now clear that the inequalities (or at least those accrued from 17 May 1990 to 5 April 1997) must be eliminated. One possible method of doing so involves the use of legislation that provides a statutory procedure for converting GMPs into ordinary scheme benefits. The method entails actuarial valuation of the benefits of the scheme member and those of his or her notional, opposite-sex comparator at a single point in time, and provision of scheme benefits that are actuarially equivalent to the higher of the two valuation results. In this way it avoids the administrative complications of maintaining dual records and performing year-on-year calculations.

Guidance

The new guidance sets out the DWP's suggested methodology for equalization-by-conversion (dubbed 'Method D2' within the *Lloyds* judgment). It adheres for the most part to the ten-stage process upon which the Department consulted in 2016/17. The final product provides more detail in certain areas, and offers guidance on some of the practicalities involved.

- The Government obliquely acknowledges that, in some cases, the costs of equalizing may be disproportionate to the benefits that would be derived by the members. It does not go so far as to venture an opinion on what trustees ought to do in such cases, beyond advising them to consult their lawyers.
- The guidance mentions that trustees must bear their fiduciary duties in mind, when considering the best approach for any active members, and when deciding what members' benefits will look like after conversion. In the latter instance it suggests that if the change will be substantial, members could be presented with options, in which case the *Code of Practice for Incentive Exercises* might be pertinent.³
- There is no suggestion that (as some had hoped) the legal requirement to consult members about conversion plans might become a less-onerous requirement to notify them. To the contrary, trustees are given guidance on how such a consultation exercise should be conducted.
- The scheme's transfer value basis could be an acceptable starting point for the conversion calculations, although actuarial advice may be necessary to ensure that it is appropriate for the task.
- The Government stops short of saying that the use of unisex actuarial factors is preferable, but suggests that 'careful consideration', and perhaps legal advice, should precede the use of sex-based factors.
- The guidance suggests some possible approaches to the additional complications involved in using conversion to equalize benefits for active and pensioner members. For example, the DWP notes that trustees could avoid some of those complications by deferring conversion for active members until they leave pensionable service.
- There is some support for the adoption of a 'sensible approximate approach' if scheme records are insufficient to quantify accurately the tranche of GMP accrued from 17 May 1990 to 5 April 1997.

¹ *Guidance on the use of the Guaranteed Minimum Pensions (GMP) conversion legislation* <www.gov.uk/government/publications/equalising-pensions-for-the-effect-of-unequal-guaranteed-minimum-pensions/guidance-on-the-use-of-the-guaranteed-minimum-pensions-gmp-conversion-legislation>.

² *Judge says GMP equalization is obligatory* (October 2018) <[www.hymans.co.uk/media/uploads/1810_lloyds_judgment_\(gmp_equalization\)_60SNS.pdf](http://www.hymans.co.uk/media/uploads/1810_lloyds_judgment_(gmp_equalization)_60SNS.pdf)>, and *GMP equalization: conversion route clarified* (December 2018) <www.hymans.co.uk/media/uploads/1812_lloyds_supplementary_judgment.pdf>.

³ <incentiveexercises.org.uk/>.

The guidance will be updated as developments demand. That could happen, for example, when the Government makes changes to equality legislation to oblige trustees to equalize whether or not actual opposite-sex comparators can be identified. This will be done 'as soon as a suitable opportunity presents itself' (in the meantime the DWP steadfastly maintains that the legal obligation already exists). It is also considering whether to make some clarifying amendments to the conversion legislation.

The publication of the guidance adds the Government's voice to those that have endorsed the use of conversion as a solution to the problem of GMP-based inequalities. Whilst it highlights areas of complexity, the benefits of a one-off conversion exercise, when compared to year-on-year comparisons and dual record-keeping, are likely to be attractive for many schemes. The arrival of the guidance places another piece in the jigsaw, but there are gaps yet to be filled, by the Government (amending legislation and, crucially, clarifying the tax consequences of equalization⁴), by the judiciary (there is still the prospect of supplementary rulings), and by the industry group that has been set up to give guidance as to best practices.⁵

At the risk of making more of the DWP's choice of words than is warranted, we note a couple of intriguing references to requirements that are 'currently' in place, as if (perhaps?) there is some potential for change. The issues in question concern the technicalities of the benefits that schemes must provide for survivors, and the need to notify Her Majesty's Revenue and Customs (HMRC) on or before the conversion date. This is, clearly, rather speculative on our part. However, it is true that the legislation could, in some cases, require schemes to provide more-valuable survivors' benefits, post-conversion, than they did previously; and that, since the abolition of contracting out, there is now a less-compelling case for trustees to rush to inform HMRC about conversion exercises.

⁴ Pension Schemes Newsletter 108 confirms that HMRC is considering the tax issues <www.gov.uk/government/publications/pension-schemes-newsletter-108-march-2019/pension-schemes-newsletter-108-march-2019>.

⁵ New industry group to advise on GMP equalisation <www.thepensionsregulator.gov.uk/en/media-hub/press-releases/new-industry-group-to-advise-on-gmp-equalisation>.